

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-40266 CBS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff

v.

TOWN OF NORTH BROOKFIELD,

Defendant

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
COUNT III OF DEFENDANT'S COUNTERCLAIM

1. Admitted for purposes of summary judgment.
2. Admitted for purposes of summary judgment.
3. Admitted for purposes of summary judgment.
4. Admitted for purposes of summary judgment.
5. Admitted for purposes of summary judgment.
6. Admitted for purposes of summary judgment.
7. Admitted that the Town's Counterclaim asserted breach of contract and G.L. c.
93A claims, but denied that the claim contained in Count III of the Town's
Counterclaim is "unspecified."
8. Admitted for purposes of summary judgment.
9. Admitted for purposes of summary judgment.
10. Admitted for purposes of summary judgment.

11. Admitted for purposes of summary judgment.

DEFENDANT'S STATEMENT OF ADDITIONAL MATERIAL FACTS AS TO
COUNT III OF DEFENDANT'S COUNTERCLAIM

1. AMMIC failed to meet announced deadlines for the selection of a completion contractor, Defendant's Answer And Counterclaim, ¶23.
2. AMMIC did not tender a completion contractor to the Town until nearly six months had passed after Sciaba's default, Id. at ¶26.
3. AMMIC made unilateral changes to the completion contract it initially proffered to the Town. Id. at ¶28.
4. AMMIC precluded the Town from entering into the completion contract by failing to promptly pay the full amount owed to the Town under the performance bond, Id. at ¶29.
5. AMMIC's obligations to the Town under the Performance Bond are not limited exclusively to the prompt payment of funds. Affidavit of Lee P. Dore, Exhibit A.
6. The Defendant incorporates by reference its Response to Plaintiff's Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment on Count II of Defendant's Counterclaim.

TOWN OF NORTH BROOKFIELD

By its attorneys

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